

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment & Natural Resources Division

ROCHELLE L. RUSSELL (Cal. Bar No. 244992)
Attorney, Environmental Defense Section
Environment & Natural Resources Division
U.S. Department of Justice
301 Howard Street, Suite 1050
San Francisco, CA 94105
Tel: (415) 744-6485
Fax: (415) 744-6476
Email: rochelle.russell@usdoj.gov
Counsel for Defendants

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SIERRA CLUB, GREAT BASIN
RESOURCE WATCH, AMIGOS BRAVOS,
and IDAHO CONSERVATION LEAGUE,

Plaintiffs,

v.

LISA P. JACKSON, Administrator, United
States Environmental Protection Agency, and
RAY LAHOOD, Secretary, United States
Department of Transportation,^{1/}

Defendants,

and

SUPERFUND SETTLEMENTS PROJECT,
RCRA CORRECTIVE ACTION PROJECT,
AMERICAN PETROLEUM INSTITUTE,
and TREATED WOOD COUNCIL,

Defendant-Intervenors.

Case No. 08-cv-01409 WHA

**STIPULATION TO AMEND THE
MAY 4, 2009 DEADLINE FOR EPA
TO PUBLISH A NOTICE OF
PRIORITY UNDER CERCLA
SECTION 108(b)**

AND

~~PROPOSED~~ ORDER THEREON

^{1/} Stephen L. Johnson and Mary E. Peters were originally named as the defendants in this case in their official capacities as Administrator of the United States Environmental Protection Agency and Secretary of the Department of Transportation, respectively. Pursuant to Federal Rule of Civil Procedure 25(d), their successors, Lisa P. Jackson and Ray LaHood, are automatically substituted.

1 WHEREAS, on March 12, 2008, Plaintiffs Sierra Club, Great Basin Resource Watch,
 2 Amigos Bravos, and Idaho Conservation League brought suit under the Comprehensive
 3 Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-
 4 9675, alleging that Defendants United States Environmental Protection Agency ("EPA") and
 5 United States Department of Transportation ("DOT") failed to perform the following alleged
 6 nondiscretionary duties under CERCLA Section 108(b), 42 U.S.C. § 9608(b): (1) publish a
 7 notice in the Federal Register by December 11, 1983, identifying those classes of facilities for
 8 which financial responsibility requirements will be first developed; (2) promulgate financial
 9 responsibility requirements beginning no later than December 11, 1985; and (3) implement those
 10 financial responsibility requirements as quickly as can reasonably be achieved but in no event
 11 later than four years after promulgation, see Dkt. 1;

12 WHEREAS, on May 22, 2008 and September 2, 2008, the Court granted motions to
 13 intervene by Defendant-Intervenors American Petroleum Institute, RCRA Corrective Action
 14 Project, Superfund Settlements Project, and Treated Wood Council, see Dkts. 34 and 70;

15 WHEREAS, on June 26, 2008, the parties filed a Joint Case Management Statement,
 16 wherein the parties proposed to resolve Plaintiffs' claims on cross-motions for summary
 17 judgment and agreed that briefing would be limited to the merits of those claims and that, in the
 18 event the Court granted Plaintiffs' motion, the parties would enter into private settlement
 19 negotiations to try to resolve the remedy (i.e., deadlines for EPA and DOT to take action under
 20 CERCLA Section 108(b)), as well as any attorneys' fees issues, see Dkt. 52, at ¶¶ 12, 16;

21 WHEREAS, on August 18, 2008, the Court entered an Order approving the parties'
 22 proposed briefing schedule, see Dkt. 68;

23 WHEREAS, on February 25, 2009, after a hearing on the merits of the parties' cross-
 24 motions for summary judgment, the Court entered an Order that: (1) granted Defendants' motion
 25 with respect to DOT, finding that Plaintiffs lack standing to sue DOT; (2) denied Defendant-
 26 Intervenors' motion, finding that Plaintiffs have standing to sue EPA; and (3) granted Plaintiffs'
 27 motion with respect to the claim that EPA failed to publish a notice by December 11, 1983
 28 identifying the classes of facilities for which financial responsibility requirements will be first

1 developed, as required under CERCLA Section 108(b), concluding that the claim is not time-
 2 barred by the six-year statute of limitations period in 28 U.S.C. § 2401(a), see Dkt. 105;

3 WHEREAS, in the February 25, 2009 Order, without any briefing by the parties as to
 4 appropriate deadlines and in lieu of the parties' agreement to attempt to negotiate deadlines
 5 through private settlement, the Court ordered EPA to publish the CERCLA Section 108(b) notice
 6 of priority by May 4, 2009, see Dkt. 105 at p.15;

7 WHEREAS, the Court, in its February 25, 2009 Order, declined to address the merits of
 8 the claims regarding EPA's alleged failure to promulgate and implement financial responsibility
 9 requirements under CERCLA Section 108(b), holding those issues in abeyance pending EPA's
 10 publication of the notice of priority, see Dkt. 105 at p.14;

11 WHEREAS, because publication in the Federal Register is under the control of the Office
 12 of the Federal Register, not EPA, and the timing of publication depends, in part, on the volume
 13 of other items awaiting publication, EPA seeks to amend the deadline to provide for signature
 14 and transmission of the notice of priority to the Office of the Federal Register for publication, see
 15 Breen Decl. ¶ 9;

16 WHEREAS, for the reasons set forth in the attached declaration, EPA plans to comply
 17 with the Court's February 25, 2009 Order but requires an approximate two-month extension, to
 18 July 10, 2009, to identify those classes of facilities for which CERCLA Section 108(b) financial
 19 responsibility requirements will be first developed and to transmit a signed notice of such
 20 prioritization to the Federal Register for publication, see Breen Decl. ¶¶ 6-9;

21 WHEREAS, the parties do not believe the requested two-month extension will be
 22 prejudicial to any of the parties or will unduly delay the Court in taking action on the two
 23 remaining issues currently being held in abeyance pending EPA's action on the notice of priority;

24 NOW THEREFORE, pursuant to Local Rules 6-2 and 7-12, the parties, by and through
 25 their undersigned counsel, hereby stipulate to modify the May 4, 2009 deadline for EPA to
 26 publish the notice of priority under CERCLA Section 108(b) to the following:

27 **No later than July 10, 2009, EPA shall identify those classes of facilities for**
 28 **which CERCLA Section 108(b) financial responsibility requirements will be**

1 first developed and shall transmit a signed notice of such prioritization to the
2 Federal Register for publication.

3 Upon publication of the notice in the Federal Register, EPA will file a status report
4 informing the Court of the Agency's action.

5 FOR DEFENDANTS:

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment & Natural Resources Division

6 Dated: April 2, 2009

7 /s/ Rochelle L. Russell
8 ROCHELLE L. RUSSELL
9 United States Department of Justice
10 Environmental Defense Section
11 301 Howard Street, Suite 1050
12 San Francisco, CA 94105
13 (415) 744-6485
14 rochelle.russell@usdoj.gov

15 FOR PLAINTIFFS:

16 Dated: April 2, 2009

17 /s/ Jan Hasselman (with permission)
18 JAN HASSELMAN
19 Earthjustice
20 705 Second Avenue, Suite 203
21 Seattle, WA 98104
22 (206) 343-7340
23 jhasselman@earthjustice.org

LISA GOLLIN EVANS
Earthjustice
21 Ocean Avenue
Marblehead, MA 01945
(781) 631-4119
levans@earthjustice.org

24 FOR DEFENDANT-INTERVENORS:

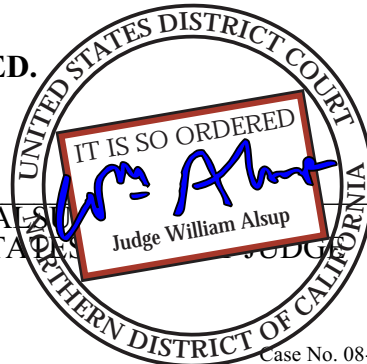
25 Dated: April 2, 2009

26 /s/ Michael W. Steinberg (with permission)
27 MICHAEL W. STEINBERG, *Pro Hac Vice*
28 Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 739-3000
msteinberg@morganlewis.com

29 PURSUANT TO STIPULATION, IT IS SO ORDERED.

30 Dated: April 9, 2009

WILLIAM A. ALSUP
UNITED STATES DISTRICT COURT



STIPULATION TO AMEND THE MAY 4, 2009 DEADLINE
FOR EPA TO PUBLISH A NOTICE OF PRIORITY UNDER
CERCLA SECTION 108(b) AND ~~PROPOSED~~ ORDER THEREON

Case No. 08-cv-01409 WHA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of April, 2009, the foregoing **STIPULATION TO AMEND THE MAY 4, 2009 DEADLINE FOR EPA TO PUBLISH A NOTICE OF PRIORITY UNDER CERCLA SECTION 108(b) AND [PROPOSED] ORDER THEREON** was electronically filed with the Clerk of the Court and served using the CM/ECF system on all parties of record.

/s/ Rochelle L. Russell
ROCHELLE L. RUSSELL

STIPULATION TO AMEND THE MAY 4, 2009 DEADLINE
FOR EPA TO PUBLISH A NOTICE OF PRIORITY UNDER
CERCLA SECTION 108(b) AND ~~[PROPOSED]~~ ORDER THEREON

Case No. 08-cv-01409 WHA